

exercise of market power by ABC. To the contrary, the contracts are a result of intense competition among schools and telecasters, and they manifest the markets' judgment as to the most efficient means for televising college football games.

In our view, therefore, there is no basis for further legislative or regulatory intervention concerning the televising of college football or other sports. While we understand that certain telecasters (in particular, local television stations) have expressed non-antitrust concerns about ABC's college football contracts,¹⁸ we do not believe that their complaints affect this conclusion.

Independent television stations complain that some college football games of the members of the leagues or associations with which ABC has contracted are not televised. They argue that time period exclusivity or other provisions in ABC's contracts prevent the televising of those games, even though the schools and local television stations would like to televise them. It is not at all clear that this complaint is well-founded; as noted, ABC's contracts permit local telecasts of all games not televised by ABC -- albeit not at the same time as ABC's telecasts -- so it is likely that there would be such local telecasts if the schools and stations really desired them.

¹⁸ See, e.g., Comment of The Association of Independent Television Stations, Inc., P.P. Docket No. 93-21 (March 29, 1993).

Moreover, even if the contracts did as a practical matter prevent the televising of some games that would otherwise be shown, they would not present a problem under competition law principles. In the first place, the restrictions in ABC's contracts are not unusual. Similar provisions are commonly included in distribution agreements and intellectual property licenses. It is always true, when a distributor or licensee acquires exclusive or partially exclusive rights, that other would-be distributors or licensees are unable to acquire rights that they would like. But the law and public policy, manifest in both the antitrust cases¹⁹ and the decisions of this Commission,²⁰ recognize that such restrictive contract provisions serve important, legitimate purposes. They protect the distributor's or licensee's investment in the product and thus the value of the rights they acquire. Without such protection, the distributor or licensee would not make the same investment in those rights.

Moreover, ABC's contracts are the result of healthy marketplace competition. Local telecasters are able to communicate to schools whatever desires they have to televise

¹⁹ E.g., Woodbury Daily Times Co. v. Los Angeles Times-Washington Post News Serv., 616 F. Supp. 502 (D.N.J. 1985), aff'd mem., 791 F.2d 924 (3d Cir. 1986) (upholding exclusive rights to syndicated features under the antitrust laws, even though only 10% of the features were actually published).

²⁰ See, e.g., Syndex Recon, 4 FCC Rcd at 2723 69.


college football games. If enough stations were willing to bid enough to acquire rights to local telecasts, the schools and their leagues would decline to enter into contracts with ABC and other national telecasters like the existing contracts; they have entered into those contracts in the past because those contracts created greater value than did the alternative of increasing telecasting opportunities for local stations.²¹ The independent television stations cannot have it both ways: They cannot take ABC's television commitments as a given and add to them the prospect of additional, local telecasts. If the leagues were prohibited from entering into contracts with ABC like the present contracts, their television rights would be less valuable; and there would thus be fewer network telecasts, smaller network audiences, and less value for advertisers.

In a similar vein, independent television stations argue that some viewers are disadvantaged because they would prefer watching their local team to the more prominent teams

²¹ Cf., Syndex Order, 3 FCC Rcd at 5307 47 ("... cable operators may negotiate with the local broadcaster to forebear from enforcement of his syndicated exclusivity rights, thus allowing importation of the duplicating programming. Reimposition of syndicated exclusivity rules will simply subject the issue of time and episode diversity to a market test. If broadcast or cable viewers value such diversity, the market will work to provide it."); see also id. at 5311 78 & 5337 n. 153 (noting that, if duplicating programming causes little harm to local broadcasters and is highly valued by cable viewers, "[l]ocal broadcasters would not be willing to pay for exclusivity and cable systems and/or superstations would be able to obtain nonexclusive rights in the same programming").

chosen by ABC for national or regional telecasts. That concern also fails to raise a serious competition policy concern, for largely the same reason. To be sure, ABC cannot televise the game of choice for every viewer (although it is able by regional telecasts to offer attractive games to most prospective viewers). But some individuals are disadvantaged in any exclusive distribution arrangement; for example, the consumer whose local appliance store loses access to a desired product when the manufacturer chooses to distribute through someone else is disadvantaged by the change. Nevertheless, competition law principles protect the outcome of marketplace competition and, in particular, the rights of suppliers and distributors to enter into such exclusive arrangements because, in the absence of market power, permitting them to do so is most likely to ensure that, overall, distribution will be most efficient and consumers will be best served. Similarly, in college football televising, reliance on the existing, robust marketplace competition best serves overall the diverse and legitimate interests of the schools, telecasters, advertisers, and viewers.

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April 11, 1994